S.B.Criminal Revision Petition No.364/2005

Ram Kishore vs. The State & Anr.

Date of the Order: October 5, 2007

HON'BLE MR.JUSTICE G.S.SARRAF

Mr.Devendra Bhardawaj for petitioner.
Mr.B.S.Chhabba, P.P.
Mr.S.R.Yadav for respondent No.2.

This criminal revision petition is directed against the order dated 18.1.2005 passed by Sessions Judge, Alwar in criminal appeal No.4/2005 whereby the appeal of the accused respondent No.2 has been allowed and the order dated 29.11.2004 of Principal Magistrate, Juvenile Court, Alwar in criminal misc. application No.1/50/2004 has been set aside and the accused respondent No. 2 has been held to be juvenile.

Heard learned counsel for the petitioner, learned P.P. and learned counsel for the accused respondent No.2.

In the inquiry held apparently under Section 49 of the Juvenile Justice (Care and Protection of Children) Act, 2005, the Principal Magistrate, Juvenile Court, Alwar has recorded statements of four witnesses for determining the question of age of the accused respondent No.2. Radhey Shyam AW.1 is the Head Master of Little

Birds Public School, Alwar and Dr.Raj Kumar Saxena AW.2, Dr. M.K. Gupta AW.3 and Dr.B.L.Gupta AW.4 are the members of the Medical Board constituted to give opinion regarding the age of the accused respondent No.2.

Radhey Shyam AW.1 has stated that the accused respondent No.2 was admitted in Little Birds Public school on 2.7.1992 and as per the school record his date of birth is 5.10.1987. He has exhibited a copy of the admission form which is Ex.2A and a copy of the admission register which is Ex.1. It is noteworthy that this witness has not been cross-examined.

Dr. Raj Kumar Saxena AW.2, Dr. M.K. Gupta AW.3 and Dr. B.L. Gupta AW.4 have stated that on the date of examination, the accused respondent No.2 was found to be around 18 years old. All the three doctors in their cross-examination have stated that a variation of 1 to 2 years is possible on lower as well as on upper side.

I am of the view that the age mentioned in the voter list and the ration card cannot be regarded to be conclusive. Regardless of the evidenciary value of the statement of Radhey Shyam, Head Master of Little Birds Public School, Alwar A.W.1 and the school record even according to the opinion of the members of the Medical Board the accused respondent No.2 may be below 18 years

of age. As such the learned Sessions Judge has rightly come to the conclusion that the accused respondent No.2 should be treated as juvenile on the date of occurrence.

There is no ground for interference in the impugned order.

Consequently, the revision petition stands dismissed.

Record be returned to the concerned court immediately.

(G.S.Sarraf),J.

Bairwa